

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA,)
v.)
JOHN JOEL FOSTER,) Case No. 2:09CR00017
Defendant.)
OPINION)
By: James P. Jones
United States District Judge

John Joel Foster, Pro Se Defendant.

The defendant, John Joel Foster, has filed a pro se Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 (West Supp. 2012), asserting claims of ineffective assistance of counsel and court error. The record reflects that Foster' direct appeal, No. 12-4619, is currently pending before the United States Court of Appeals for the Fourth Circuit. Therefore, I find that Foster's § 2255 motion must be dismissed without prejudice.

The well established general rule is that, absent extraordinary circumstances, the district court should not consider § 2255 motions while a direct appeal is pending. *See United States v. Weaver*, No. 97-6443, 1997 WL 468277, *1 (4th Cir. 1997) (unpublished) (citing *Bowen v. Johnston*, 306 U.S. 19, 26-27 (1939)). Foster’s motion fails to present extraordinary circumstances compelling this court to address his claims under § 2255 during the pendency of his direct appeal.

For these reasons, I will dismiss the § 2255 motion as premature without prejudice to Foster's right to file a § 2255 motion after disposition of his direct appeal. A separate Final Order will be entered herewith.

DATED: January 9, 2013

/s/ James P. Jones
United States District Judge